

**ASSEMBLY BILL**

**No. 1999**

**Introduced by Assembly Member Kuehl**

February 18, 1998

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An act to amend Sections 422.75, 11410, 13023, and 13519.6 of, and to add Section 422.76 to, the Penal Code, relating to gender.

LEGISLATIVE COUNSEL'S DIGEST

AB 1999, as introduced, Kuehl. Hate crimes: gender.

(1) Existing law punishes as a misdemeanor, a person who uses force or threat of force to willfully injure, intimidate, interfere with, oppress, or threaten any person in the free exercise or enjoyment of a right or privilege because of that person's race, color, religion, ancestry, national origin, disability, gender, or sexual orientation. Similarly, existing law imposes an enhanced penalty on a person who, while acting in concert with another person, commits or attempts to commit a felony because of the victim's membership in one or more of the above specified groups. An enhanced penalty is also imposed on any person who commits or attempts to commit a felony against the property of a public agency or private institution because the property is identified or associated with a person who is a member of, or a group that is included within, one of the groups specified above. Additionally, existing law imposes enhanced penalties on a person who commits or attempts to commit a felony because of the victim's race, color, religion, nationality, country of origin, ancestry, disability, or sexual orientation, and on a

person for each prior felony conviction committed because of the victim's membership in any of the groups just specified.

This bill would amend the last 2 provisions summarized above by adding gender to the list of groups in which the victim's membership entitles the victim to protection under those enhancement statutes. This bill would also define "gender" for purposes of the provisions summarized in this digest and other specified provisions, to mean a person's actual or perceived sex, and includes a person's identity or appearance, whether or not that identity or appearance is different from that traditionally associated with that person's sex at birth. By expanding the definition of an enhancement, this bill would impose a state-mandated local program.

(2) Existing law expresses the Legislature's intent that every person regardless of race, color, creed, religion, or national origin, has the right to be secure and protected from fear, intimidation, and physical harm caused by the activities of violent groups and individuals.

This bill would add a person's gender to the above list of characteristics that are protected by law.

(3) Existing law requires the Attorney General to direct local law enforcement agencies to report to the Department of Justice, information regarding physical injury, emotional suffering, or property damage where there is a reasonable cause to believe that the crime was motivated, in whole or in part, by the victim's race, ethnicity, religion, sexual orientation, or physical or mental disability.

This bill would add gender to the list of victim characteristics in the above reporting provision. By increasing the reporting duties of local officials, this bill would impose a state-mandated local program.

(4) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.



This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 422.75 of the Penal Code is  
2 amended to read:  
3 422.75. (a) Except in the case of a person punished  
4 under Section 422.7, a person who commits a felony or  
5 attempts to commit a felony because of the victim's race,  
6 color, religion, nationality, country of origin, ancestry,  
7 disability, *gender*, or sexual orientation, or because he or  
8 she perceives that the victim has one or more of those  
9 characteristics, shall receive an additional term of one,  
10 two, or three years in the state prison, at the court's  
11 discretion.  
12 (b) Except in the case of a person punished under  
13 Section 422.7 or subdivision (a) of this section, any person  
14 who commits a felony or attempts to commit a felony  
15 against the property of a public agency or private  
16 institution, including a school, educational facility, library  
17 or community center, meeting hall, place of worship, or  
18 offices of an advocacy group, or the grounds adjacent to,  
19 owned, or rented by the public agency or private  
20 institution, because the property of the public agency or  
21 private institution is identified or associated with a person  
22 or group of an identifiable race, color, religion,  
23 nationality, country of origin, ancestry, gender, disability,  
24 or sexual orientation, shall receive an additional term of  
25 one, two, or three years in the state prison, at the court's  
26 discretion.

1 (c) Except in the case of a person punished under  
2 Section 422.7 or subdivision (a) or (b) of this section, any  
3 person who commits a felony, or attempts to commit a  
4 felony, because of the victim's race, color, religion,  
5 nationality, country of origin, ancestry, gender, disability,  
6 or sexual orientation, or because he or she perceives that  
7 the victim has one or more of those characteristics, and  
8 who voluntarily acted in concert with another person,  
9 either personally or by aiding and abetting another  
10 person, shall receive an additional two, three, or four  
11 years in the state prison, at the court's discretion.

12 (d) For the purpose of imposing an additional term  
13 under subdivision (a) or (c), it shall be a factor in  
14 aggravation that the defendant personally used a firearm  
15 in the commission of the offense. Nothing in this  
16 subdivision shall preclude a court from also imposing a  
17 sentence enhancement pursuant to Section 12022.5 or  
18 12022.55, or any other law.

19 (e) A person who is punished pursuant to this section  
20 also shall receive an additional term of one year in the  
21 state prison for each prior felony conviction on charges  
22 brought and tried separately in which it was found by the  
23 trier of fact or admitted by the defendant that the crime  
24 was committed because of the victim's race, color,  
25 religion, nationality, country of origin, ancestry,  
26 disability, *gender*, or sexual orientation, or that the crime  
27 was committed because the defendant perceived that the  
28 victim had one or more of those characteristics. This  
29 additional term shall only apply where a sentence  
30 enhancement is not imposed pursuant to Section 667 or  
31 667.5.

32 (f) Any additional term authorized by this section shall  
33 not be imposed unless the allegation is charged in the  
34 accusatory pleading and admitted by the defendant or  
35 found to be true by the trier of fact.

36 (g) Any additional term imposed pursuant to this  
37 section shall be in addition to any other punishment  
38 provided by law.

39 (h) Notwithstanding any other law, the court may  
40 strike any additional term imposed by this section if the

1 court determines that there are mitigating circumstances  
2 and states on the record the reasons for striking the  
3 additional punishment.

4 SEC. 2. Section 422.76 is added to the Penal Code, to  
5 read:

6 422.76. For purposes of Section 186.21, subdivisions  
7 (a) and (b) of Section 422.6, Section 422.7, subdivisions  
8 (a), (b), (c), and (e) of Section 422.75, Sections 1170.75  
9 and 11410, paragraph (9) of subdivision (b) of Section  
10 11413, Section 13023, subdivision (a) of Section 13519.6  
11 and subdivision (a) of Section 23519.6, “gender” means a  
12 person’s actual or perceived sex, and includes a person’s  
13 identity, appearance, or behavior, whether or not that  
14 identity, appearance, or behavior is different from that  
15 traditionally associated with the person’s sex at birth.

16 SEC. 3. Section 11410 of the Penal Code is amended  
17 to read:

18 11410. The Legislature finds and declares that it is the  
19 right of every person regardless of race, color, creed,  
20 religion, *gender*, or national origin, to be secure and  
21 protected from fear, intimidation, and physical harm  
22 caused by the activities of violent groups and individuals.  
23 It is not the intent of this chapter to interfere with the  
24 exercise of rights protected by the Constitution of the  
25 United States. The Legislature recognizes the  
26 constitutional right of every citizen to harbor and express  
27 beliefs on any subject whatsoever and to associate with  
28 others who share similar beliefs. The Legislature further  
29 finds however, that the advocacy of unlawful violent acts  
30 by groups against other persons or groups under  
31 circumstances where death or great bodily injury is likely  
32 to result is not constitutionally protected, poses a threat  
33 to public order and safety and should be subject to  
34 criminal and civil sanctions.

35 SEC. 4. Section 13023 of the Penal Code is amended  
36 to read:

37 13023. Commencing July 1, 1990, subject to the  
38 availability of adequate funding, the Attorney General  
39 shall direct local law enforcement agencies to report to  
40 the Department of Justice, in a manner to be prescribed

1 by the Attorney General, such information as may be  
2 required relative to any criminal acts or attempted  
3 criminal acts to cause physical injury, emotional suffering,  
4 or property damage where there is a reasonable cause to  
5 believe that the crime was motivated, in whole or in part,  
6 by the victim's race, ethnicity, religion, *gender*, sexual  
7 orientation, or physical or mental disability. On or before  
8 July 1, 1992, and every July 1 thereafter, the Department  
9 of Justice shall submit a report to the Legislature  
10 analyzing the results of the information obtained from  
11 local law enforcement agencies pursuant to this section.

12 SEC. 5. Section 13519.6 of the Penal Code is amended  
13 to read:

14 13519.6. (a) The commission shall, on or before  
15 December 31, 1993, develop guidelines and a course of  
16 instruction and training for law enforcement officers who  
17 are employed as peace officers, or who are not yet  
18 employed as a peace officer but are enrolled in a training  
19 academy for law enforcement officers, addressing hate  
20 crimes. "Hate crimes," for purposes of this section, means  
21 any act of intimidation, harassment, physical force, or the  
22 threat of physical force directed against any person, or  
23 family, or their property or advocate, motivated either in  
24 whole or in part by the hostility to the real or perceived  
25 ethnic background, national origin, religious belief,—~~sex~~  
26 *gender*, age, disability, or sexual orientation, with the  
27 intention of causing fear and intimidation.

28 (b) The course shall make maximum use of audio and  
29 video communication and other simulation methods and  
30 shall include instruction in each of the following  
31 procedures and techniques:

32 (1) Indicators of hate crimes.

33 (2) The impact of these crimes on the victim, the  
34 victim's family, and the community.

35 (3) Knowledge of the laws dealing with hate crimes  
36 and the legal rights of, and the remedies available to,  
37 victims of hate crimes.

38 (4) Law enforcement procedures, reporting, and  
39 documentation of hate crimes.



1 (5) Techniques and methods to handle incidents of  
2 hate crimes in a noncombative manner.

3 (c) The guidelines developed by the commission shall  
4 incorporate the procedures and techniques specified in  
5 subdivision (b).

6 (d) The course of training leading to the basic  
7 certificate issued by the commission shall, not later than  
8 July 1, 1994, include the course of instruction described in  
9 subdivision (a).

10 (e) As used in this section, “peace officer” means any  
11 person designated as a peace officer by Section 830.1 or  
12 830.2.

13 SEC. 6. No reimbursement is required by this act  
14 pursuant to Section 6 of Article XIII B of the California  
15 Constitution for certain costs that may be incurred by a  
16 local agency or school district because in that regard this  
17 act creates a new crime or infraction, eliminates a crime  
18 or infraction, or changes the penalty for a crime or  
19 infraction, within the meaning of Section 17556 of the  
20 Government Code, or changes the definition of a crime  
21 within the meaning of Section 6 of Article XIII B of the  
22 California Constitution.

23 However, notwithstanding Section 17610 of the  
24 Government Code, if the Commission on State Mandates  
25 determines that this act contains other costs mandated by  
26 the state, reimbursement to local agencies and school  
27 districts for those costs shall be made pursuant to Part 7  
28 (commencing with Section 17500) of Division 4 of Title  
29 2 of the Government Code. If the statewide cost of the  
30 claim for reimbursement does not exceed one million  
31 dollars (\$1,000,000), reimbursement shall be made from  
32 the State Mandates Claims Fund.

33 Notwithstanding Section 17580 of the Government  
34 Code, unless otherwise specified, the provisions of this act  
35 shall become operative on the same date that the act  
36 takes effect pursuant to the California Constitution.